

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

3 UNITED STATES OF AMERICA,) Docket No. 11 CR 50062
4 Plaintiff,) Rockford, Illinois
5 v.) Friday, May 30, 2014
6 DAYTON POKE,) 9:30 o'clock a.m.
7 Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FREDERICK J. KAPALA

APPEARANCES:

For the Government: HON. ZACHARY T. FARDON
United States Attorney
(327 S. Church Street,
Rockford, IL 61101) by
MR. MARK T. KARNER
Assistant U.S. Attorney

For the Defendant: **LAW OFFICE OF TINA LONG RIPPY**
(216 N. Court Street,
Rockford, IL 61103) by
MS. TINA LONG RIPPY

Also Present: MS. JENNIFER TABORSKI
Probation Office

Court Reporter: Mary T. Lindblom
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(779) 772-8309

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1 THE CLERK: 11 CR 50062-1, U.S.A. v. Dayton Poke.

2 MR. KARNER: Good morning, your Honor. Mark Karner on
3 behalf of the United States.

4 MS. RIPPY: Good morning, your Honor. Tina Rippy on
5 behalf of Mr. Poke, who is standing next to me in custody.

6 THE COURT: Show Mr. Poke appears.

7 This case comes before the court for a continued
8 sentencing hearing. The pretrial services report indicates that
9 Mr. Poke is taking medications. He's taking two inhalers,
10 albuterol, and also naproxen. Are you still taking those
11 medications?

12 DEFENDANT POKE: Yes. Yes, sir.

13 THE COURT: And did you take them today?

14 DEFENDANT POKE: I took the amitriptyline and the
15 gabapentin.

16 THE COURT: And what are those for?

17 DEFENDANT POKE: The amitriptyline is for mental health
18 reasons, and the gabapentin is for my nerve pain. I got copies
19 of the medications.

20 THE COURT: That's all right. I don't need to see
21 them. But they were prescribed by a doctor?

22 DEFENDANT POKE: Yes.

23 THE COURT: A physician?

24 DEFENDANT POKE: Yes. Here's the whole report here
25 with the medication.

1 THE COURT: Keep them right there in your packet.

2 Are there any other medications you're taking besides
3 the ones we've mentioned and the ones you've mentioned?

4 DEFENDANT POKE: I take another pain med, naproxen.

5 THE COURT: Right. I mentioned that one.

6 DEFENDANT POKE: Oh, yeah. But I ain't take that
7 today.

8 THE COURT: All right. Is there anything about those
9 medications that affects your ability to think or reason or make
10 decisions?

11 DEFENDANT POKE: No, sir.

12 THE COURT: Is there anything about those medications
13 that affects your ability to understand what we're doing this
14 morning?

15 DEFENDANT POKE: No sir.

16 THE COURT: Is there anything about those medications
17 that affects your ability to communicate with Ms. Rippy about
18 your case?

19 DEFENDANT POKE: No, sir.

20 THE COURT: All right. Have you consumed any other
21 drugs or alcohol in the past 24 hours?

22 DEFENDANT POKE: No, sir.

23 THE COURT: All right. I think it would be helpful to
24 recap the sentencing materials. There is a presentence
25 investigation report, a government 851 notice, defendant's

1 sentencing memorandum, the government's response to that, a
2 supplemental sentencing memorandum by the defendant, the
3 government's response to that, a second supplemental sentencing
4 memorandum and the government's response to that, the United
5 States argument regarding defendant's eligibility to be
6 sentenced as an armed career criminal and the defendant's
7 response to that, and also a supplemental report from the
8 probation office dated May 29th, 2014.

9 Mr. Poke, have you had a chance to review those
10 materials with Attorney Rippy?

11 DEFENDANT POKE: Somewhat.

12 THE COURT: Okay. Well, I want you to -- if you need
13 to take some time here and go over them with her, I'll be glad
14 to let you do so.

15 DEFENDANT POKE: I mean, yes, I would like to. It's up
16 to her.

17 THE COURT: All right. Have a seat and review them
18 with her.

19 (Brief pause.)

20 THE COURT: All right. Ready to proceed?

21 MS. RIPPY: Yes. Thank you, your Honor. We've had an
22 opportunity to go through the sentencing memorandum at this
23 time.

24 THE COURT: All right. You've gone through it before
25 this date, though, haven't you?

1 MS. RIPPY: I beg your pardon?

2 THE COURT: You've reviewed it with him before this
3 date?

4 MS. RIPPY: Oh, yes. On many occasions.

5 THE COURT: Let me ask you this. Is there any
6 objection to forfeiting the firearm and ammunition?

7 MS. RIPPY: No, your Honor.

8 MR. KARNER: And I have -- I'm sorry. I should have
9 filed it earlier, but I've got the motion for preliminary order
10 of forfeiture on my desktop, and I'd ask leave to file that
11 later today.

12 DEFENDANT POKE: Excuse me, your Honor. I didn't
13 understand the question.

14 THE COURT: The government's asked that the ammunition
15 and the gun be forfeited.

16 All right. Other than the guidelines calculations and
17 your objection to the designation of the defendant as an armed
18 career criminal, does the defense have any dispute as to the
19 factual findings and conclusions contained in the presentence
20 report and accompanying materials?

21 MS. RIPPY: No, your Honor.

22 THE COURT: Same question to the government.

23 MR. KARNER: No, your Honor.

24 THE COURT: I want to bring up one matter, and that is
25 in regard to paragraph 53. That paragraph has to do with the

1 charge of robbery to which the defendant was convicted, and it
2 says that his parole was discharged on June 8th, 2001, but I
3 don't think that's exactly correct. I think that should read
4 that he was released from custody on 2001. Is that correct? I
5 have the document that Mr. Poke presented, I believe it was at
6 our last hearing, showing his discharge from Logan, and it shows
7 that he was discharged, and the box marked parole is not marked.

8 MR. KARNER: I'd have to review the documents.

9 THE COURT: Attorney Rippy, can you enlighten me on
10 that?

11 MS. RIPPY: If I just may have one moment.

12 THE COURT: Jen, can you speak to that, please?

13 MS. TABORSKI: Yes, your Honor. Actually on that date
14 the sentence expired, and he was discharged from the Illinois
15 Department of Corrections.

16 THE COURT: Right.

17 MS. RIPPY: I believe you're correct, your Honor.
18 Mr. Poke was released from custody when his sentence was
19 discharged on that date.

20 THE COURT: All right. I will adopt the factual
21 findings and conclusions contained in the presentence report and
22 accompanying materials. The presentence report and accompanying
23 materials and the transcript of these proceeding will stand as
24 my factual findings and conclusions.

25 As to the defendant's designation in the presentence

1 investigation report as an armed career criminal and his
2 designation as a career offender, the defendant does have
3 objections. I've reviewed the documents. I've reviewed our
4 discussion on this. If the parties will have a seat, I'll share
5 my reasoning with you.

6 In this case there have been several different
7 objections and arguments concerning whether the defendant
8 qualifies for an enhanced penalty under 18 U.S.C. Section
9 924(e), which is often referred to as the Armed Career Criminal
10 Act or ACCA. This provision, if applicable, would mandate a
11 statutory minimum sentence of 15 years' imprisonment and a
12 maximum term of life imprisonment on Count 2, which is the
13 defendant's conviction for being a felon in possession of a
14 firearm in violation of 18 U.S.C. Section 922(g). Without the
15 enhanced penalty, Count 2 would be subject to a statutory
16 maximum sentence of ten years. I note, however, that this
17 determination does not impact the calculation of the career
18 offender provision under the guidelines or otherwise change the
19 applicable advisory guidelines range in this case.

20 A defendant is designated as an armed career criminal
21 under Section 924(e) if he has three previous convictions for a
22 violent felony or a serious drug offense or both committed on
23 different occasions. Although I will discuss in greater detail
24 the definitions later, it is sufficient for now to mention that
25 the terms violent felony and serious drug offense are each

1 specifically defined in the statute, and whether a particular
2 past offense qualifies under those definition sections is often
3 the key inquiry or dispute that arises in ruling on an ACCA
4 objection.

5 Here the probation officer found in the presentence
6 investigation report that the defendant qualified as an armed
7 career criminal. I note before proceeding any further that this
8 finding does result in a potential enhancement under
9 Section 4B1.4 of the guidelines, but in this case, as noted in
10 paragraph 45 of the presentence investigation report, that
11 section did not have any impact on the final guidelines
12 calculation. Thus, the only effect of the ACCA determination
13 for our purposes is to determine the statutory sentencing range
14 that is applicable for the defendant's conviction on Count 2.

15 The probation officer found that the defendant had a
16 total of five predicate offenses, two serious drug offenses and
17 three violent felonies. Specifically, the probation officer
18 relied on the defendant's convictions for possession with intent
19 to deliver one to 15 grams of cocaine from case number
20 01 CF 1860, possession with intent to deliver one to 15 grams of
21 cocaine from case number 04 CF 1596, aggravated battery from a
22 juvenile case, number 94 J 122, robbery from case number
23 98 CF 125, and aggravated battery from case number 01 CF 2297.

24 In its most recent submission, which was filed on
25 April 28th as docket entry 162, the government has withdrawn its

1 contention that the two aggravated battery convictions could be
2 used as predicate offenses for purposes of the ACCA.

3 Accordingly, the court will not consider those two offenses for
4 purposes of determining whether the defendant is an armed career
5 criminal, and to the extent the defendant was challenging those
6 predicate offenses in his original sentencing memorandum, that
7 objection is sustained.

8 In the government's same submission, however, it
9 maintains that the defendant still qualifies as an armed career
10 criminal and argues that his felony conviction for mob action
11 from case number 08 CF 2628 also qualifies as a violent felony
12 for purposes of the ACCA. Therefore, in total, there are now
13 four potential predicate offenses, the two controlled substance
14 offenses, the robbery, and the mob action, and the defendant
15 will qualify as an armed career criminal so long as at least
16 three of those four convictions qualify as predicate offenses
17 under the ACCA.

18 The court will address each of these offenses, as well
19 as the parties' objections and arguments, from all of the
20 written submissions and various court hearings that have been
21 held so far. Because these arguments were never presented in
22 one coherent written submission, but rather have come to the
23 court's attention in a rather piecemeal fashion, the parties
24 should pay close attention and alert me right away if I happen
25 to miss an argument that has previously been raised.

1 I will start with the two controlled substance
2 offenses. The probation officer determined that these two
3 offenses each qualified as a serious drug offense for purposes
4 of Section 924(e). The term serious drug offense is defined in
5 Section 924(e) (2) (A) in relevant part as an offense under state
6 law involving manufacturing, distributing, or possessing with
7 intent to manufacture or distribute a controlled substance for
8 which a maximum term of imprisonment of ten years or more is
9 prescribed by law. According to the presentence investigation
10 report, both of these convictions were for possession with
11 intent to deliver between one to 15 grams of cocaine, which is a
12 Class 1 felony under Illinois law, as set forth in 720 ILCS
13 570/401(c) (2). A Class 1 felony is punishable by a sentence of
14 imprisonment of not less than four years and not more than 15
15 years, as set forth in 730 ILCS 5/5-1, 5-4.5-30. Thus, on its
16 face these two convictions meet the definition for a serious
17 drug offense for the purpose of 924(e). The defendant, however,
18 raises a couple of objections to using these controlled
19 substance offenses as predicate offenses for purposes of the
20 ACCA.

21 Regarding 01 CF 1860, in his supplemental sentencing
22 memorandum which was filed on February 21st as docket entry 143,
23 the defendant challenges this conviction and objects to the
24 details of that conviction, as set forth in paragraph 64 of the
25 presentence investigation report. The presentence report shows

1 that the original charge was for a possession with intent to
2 deliver one to 15 grams of cocaine within a thousand feet of a
3 church and that the defendant pled guilty to an amended charge
4 of possession with intent to deliver one to 15 grams of cocaine.
5 In his objection the defendant argues that his memory of the
6 charge is that he pled guilty to possession only and not to
7 intent to deliver.

8 If that were true, then the defendant's conviction
9 would be a Class 4 felony under 720 ILCS 570/402(c) and would
10 not qualify under the definition of a serious drug offense for
11 purposes of Section 924(e) because the maximum sentence would be
12 less than ten years. However, my review leads me to conclude
13 that defendant's memory is not accurate. In its response to the
14 supplemental sentencing memorandum, the government submitted a
15 certificate of conviction showing that the defendant was
16 convicted of possession with intent to deliver a controlled
17 substance, a Class 1 felony, in violation of 720 ILCS
18 570/401(c) (2). Based on this submission, the court overrules
19 the defendant's objection and finds that the conviction is
20 accurately recited in the presentence investigation report.

21 At a previous hearing the defendant continued to press
22 this issue in a pro se capacity without his counsel's
23 assistance. He argued that he pled guilty to possession only
24 and that his plea was somehow changed or forged after it had
25 been entered and signed by him. In support of this contention,

1 the court received in evidence several documents at the
2 defendant's behest, including the bill of indictment, the
3 judgment, the defendant's plea of guilty, and the docket sheet
4 from case number 01 CF 1860.

5 The court has reviewed all of these documents, and
6 while there clearly was an amendment on the face of the
7 indictment by striking the reference to within a thousand feet
8 of a church, there is no evidence of an amendment to a charge of
9 mere possession. Moreover, I note that the defendant's guilty
10 plea clearly references the case number and describes the charge
11 as a Class 1 felony as amended on indictment face. Accordingly,
12 although the court previously indicated that it would not be
13 considering this pro se argument, the court nevertheless
14 concludes for the sake of completeness that this objection is
15 without merit and is overruled.

16 The defendant's other argument concerning his
17 controlled substance offenses, 01 CF 1860 and 04 CF 1596, is
18 based on the Seventh Circuit's en banc decision in *Buchmeier v.*
19 *United States*, 581 F.3d 561. As the parties are aware, this
20 decision provides certain circumstances in which a defendant's
21 prior conviction cannot be used to support an enhanced sentence
22 under the ACCA. Specifically the court held that the statutory
23 definition for the term crime punishable by imprisonment for a
24 term exceeding one year, which is set out in 18 U.S.C. Section
25 921(a)(20), contains an exception for any conviction in which

1 defendant had received a restoration of civil rights.

2 Relying on Buchmeier and its progeny, the defendant
3 argues in his second supplemental memorandum, which was filed on
4 April 9th as docket entry 154, that he would have received a
5 restoration of rights letter similar to the one at issue in
6 Buchmeier at the end of his sentence for case number 04 1596
7 and, therefore, that this conviction cannot count as a predicate
8 offense for purposes of Section 924(e).

9 Notably in that same written submission, the defendant
10 took the position that he did not have his rights restored for
11 case number 01 CF 1860 because he was incarcerated at the time
12 of the expiration of that sentence, but he has since testified
13 at a previous hearing that he did receive a letter in 2005
14 informing him that his rights had been restored from the 01 CF
15 1860 conviction.

16 Accordingly, it appears that the defendant is now
17 contending that neither one of the controlled substance offenses
18 should qualify him as an armed career criminal. This argument
19 is without merit. The definition for a serious drug offense in
20 Section 924(e) (2) (A) does not rely on the term crime punishable
21 by imprisonment for a term exceeding one year that was analyzed
22 in the Buchmeier opinion. That term is only found in Section
23 924(e) as part of the definition for the term violent felony.
24 Thus, the Buchmeier opinion and the restoration of rights
25 exception contained in Section 921(a) (20) has no bearing on

1 whether the defendant's prior controlled substance offenses
2 qualify as serious drug offenses for purposes of Section 924(e) .

3 In fact, the Seventh Circuit has recognized this
4 distinction in footnote two in the case of *Gant v. United*
5 *States*, 627 F.3d 677. Accordingly, based on the plain language
6 of the statute and the Seventh Circuit's reasoning in *Gant*, the
7 court overrules any objection based on *Buchmeier* to using the
8 two controlled substance offenses as predicate offenses for
9 purposes of applying an enhanced penalty under the ACCA.

10 Based on the foregoing, the court finds that the two
11 controlled substance offenses identified in paragraph 45 of the
12 presentence investigation report, case numbers 01 CF 1860 and
13 04 CF 1596, qualify as serious drug offenses under Section
14 924(e) and count as two of the three predicate offenses needed
15 to support an enhanced sentence under the Armed Career Criminal
16 Act.

17 I would also note at this point in the hearing that
18 these two same controlled substance offenses form the basis for
19 the career offender enhancement under Section 4B1.1 of the
20 guidelines, as set out in more detail in paragraph 44 of the
21 presentence investigation report. Because that enhancement only
22 requires two prior felony convictions for either a crime of
23 violence or a controlled substance offense, the defendant
24 qualifies as a career offender regardless of how the court rules
25 on the remaining objections to using the defendant's robbery and

1 mob action convictions as predicate offenses for purposes of the
2 ACCA. Therefore, the advisory guidelines range in this case,
3 which is driven by the career offender enhancement, will not
4 change no matter how the court rules on the ACCA issue.

5 There was one final issue I think is appropriate to
6 address now before moving away from the controlled substance
7 offenses. In his second supplemental memorandum, the defendant
8 raises a motion for a new trial as to his Section 922(g)
9 conviction in Count 2 and argues that this conviction should be
10 vacated as a result of the Buchmeier decision. The court agrees
11 that the Buchmeier issue comes into play with respect to a
12 conviction under Section 922(g) (1) because that section utilizes
13 the term crime punishable by imprisonment for a term exceeding
14 one year that is defined in Section 921(a) (20). However, this
15 argument fails for a number of reasons.

16 First, it is procedurally improper to raise a motion
17 for new trial in a sentencing memorandum, and, in any event, the
18 motion is untimely. Under Federal Rule of Criminal Procedure
19 33(b) (2), any motion for a new trial grounded on any reason
20 other than newly discovered evidence must be filed within
21 14 days after the verdict. Here the motion, if you can call it
22 a motion, is well outside that time period.

23 The defendant argues briefly without any explanation
24 that his motion is based on newly discovered evidence. The
25 court disagrees. To the extent defendant received these various

1 restoration of rights letters as he has alleged and testified to
2 at a previous hearing, that information was available to him
3 before the trial ever began. The fact that the defendant may
4 have recently obtained evidence to support this claim does not
5 show that it is newly discovered. It merely shows that
6 defendant did not exercise due diligence in obtaining the
7 evidence.

8 In any event, if the court overlooked the untimeliness
9 of the motion, it also fails on the merits. At the trial the
10 defendant stipulated to the fact that he had a prior conviction
11 for purposes of the Section 922(g) charge. Accordingly, the
12 jury was presented with sufficient evidence to find that element
13 of the offense.

14 Moreover, even if the court were to accept all of the
15 defendant's arguments and find that he had his rights restored
16 as to both controlled substance offenses, the robbery
17 conviction, and the aggravated battery convictions, the court
18 would still find that the defendant had at least one prior
19 felony conviction based on his 2009 conviction for mob action in
20 case number 08 CF 2628.

21 The defendant's own exhibits attached to his second
22 supplemental memorandum shows that the Illinois Department of
23 Corrections changed the letter they sent in response to the
24 Buchmeier decision in order to expressly provide that the
25 recipient was still prohibited from possessing any firearm or

1 firearm ammunition, thereby showing that the exception set forth
2 in Section 921(a)(20) and discussed in Buchmeier was
3 inapplicable.

4 Because the defendant's term of probation for this mob
5 action conviction would not have expired until after the
6 Buchmeier decision had been issued and the Illinois Department
7 of Corrections changed its letter, the mob action conviction
8 would support the defendant's instant Section 922(g) conviction
9 even if the defendant were somehow allowed to withdraw the
10 stipulation. Accordingly, for all these reasons, the
11 defendant's motion for a new trial is denied.

12 Turning back to the armed career criminal issue, the
13 parties dispute whether the defendant's prior convictions for
14 robbery and mob action qualify as violent felonies for purposes
15 of Section 924(e). The term violent felony is defined in
16 Section 924(e)(2)(B) in relevant part as any crime punishable by
17 imprisonment for a term exceeding one year, that (i) has as an
18 element the use, attempted use, or threatened use of physical
19 force against the person of another or (ii) is burglary, arson,
20 or extortion, involves use of explosive, or otherwise involves
21 conduct that presents a serious potential risk of physical
22 injury to another.

23 As for the robbery conviction, there is no dispute that
24 the defendant's crime was punishable by a term of imprisonment
25 exceeding one year in that it was a Class 2 felony under

1 Illinois law, and the defendant received a sentence of three
2 years in the Illinois Department of Corrections. Likewise,
3 there is no dispute that the crime has as an element the use,
4 attempted use, or threatened use of physical force against
5 another person. And for that proposition I would refer the
6 parties to *United States v. Lewis*, 405 F.3d 511.

7 Accordingly, it would appear that this conviction
8 qualifies as a violent felony and could be used as a predicate
9 offense for purposes of the ACCA. However, defendant objects to
10 this offense being used as a predicate offense based on the
11 Buchmeier issue. As I noted earlier, the term crime punishable
12 by imprisonment for a term exceeding one year, which is used in
13 the statutory definition of the term violent felony, is further
14 defined in Section 921(a)(20), and we know from Buchmeier that
15 if the defendant received a restoration of his civil rights
16 following that conviction without an express prohibition against
17 firearms, that conviction would not qualify and could not be
18 used to enhance the defendant's sentence under Section 924(e).

19 This Buchmeier argument was first raised by counsel in
20 the defendant's second supplemental sentencing memorandum after
21 it had previously been raised by the defendant only in a pro se
22 capacity. In that written submission, the defendant conceded
23 that he could not produce an actual copy of the restoration of
24 rights letter that he claims to have received from the Illinois
25 Department of Corrections following his discharge from parole

1 for the robbery conviction.

2 Nevertheless, the defendant argued that the letter at
3 issue in the Buchmeier case was a standard letter utilized by
4 the Illinois Department of Corrections from the early 1990s
5 through 2004 and that it was standard procedure for the Illinois
6 Department of Corrections to send this letter to a defendant
7 upon the completion of his sentence in accordance with
8 Administrative Directive 04.5.150. I'm sorry. I may have
9 misread that. The number is 04.50.150. Therefore, the
10 defendant argued when he was discharged from parole on his
11 robbery conviction on June 8th 2001, he would have received a
12 letter identical to that received by Buchmeier.

13 In United States v. Burnett, 641 F.3d 894, the Seventh
14 Circuit held that Section 921(a)(20) sets an objective standard
15 and concluded that the effect of a restoration of rights letter
16 like the one at issue in Buchmeier does not depend on whether
17 the recipient reads or understands the communication. Based on
18 this binding authority, the court agrees that a defendant could
19 meet his burden of showing by a preponderance of the evidence
20 that his rights were restored by reference to the standard
21 practice and procedure of the IDOC, as the defendant has
22 attempted to do in this case. Unfortunately, a close review of
23 the evidence presented here does not show that defendant
24 received a restoration of rights letter following his robbery
25 conviction. If anything, the evidence presented indicates that

1 the defendant would not have been a recipient of the standard
2 issue letter from the IDOC.

3 The pre-2004 sample letter provided by defendant as an
4 exhibit to his second supplemental memorandum clearly shows that
5 the letter is concerning -- and I quote from the subject line --
6 discharge from parole/mandatory supervised release. The
7 concluding paragraph of the sample letter also shows the nature
8 of the communication, and it reads: We take this opportunity to
9 congratulate you on your successful completion of your
10 supervision and wish you continued success.

11 Clearly, this letter is designed to be sent to a
12 defendant who at the time of the receipt was on parole or
13 mandatory supervised release and had successfully completed that
14 portion of their sentence. This finding is consistent with the
15 cited administrative directive, 04.50.150, which provides upon
16 notification of discharge, the appropriate parole supervisor
17 shall ensure the releasee is notified of restoration of his or
18 her rights. And I'll highlight the fact that the directive
19 includes the term parole supervisor and releasee.

20 The problem for the defendant is that he did not
21 successfully complete his parole on the robbery conviction, a
22 fact that he admitted at a previous hearing. Indeed the
23 presentence investigation report shows that the defendant was
24 returned to the Illinois Department of Corrections custody on
25 December 28th, 2000, prior to the date of his final discharge.

1 Under those circumstances, the administrative directive
2 04.50.150 would not have applied to the defendant, and it would
3 not have made any sense for the Illinois Department of
4 Corrections to send the defendant a letter congratulating him on
5 the successful completion of his parole after that parole had
6 been revoked.

7 Now, I note that there may have been some confusion
8 because of the fact that paragraph 53 of the presentence
9 investigation report shows parole discharge on June 8th, 2001.
10 However, as we have seen, this was a mistake. Furthermore, the
11 court accepted into evidence at the defendant's request a
12 document from the Logan Correctional Center which is referred to
13 as a drop slip. This document shows that as of June 8th, 2001,
14 defendant was a resident of the Logan Correctional Center and
15 that he was being discharged from custody and released at the
16 lobby desk at 9:18 that morning. This document clearly shows
17 that the defendant was in custody on that date and was not on
18 parole at that time. In fact, the box marked paroled was not
19 marked. Instead the box marked discharged was designated.

20 Based on all of the objective evidence presented, the
21 court finds that the defendant has not met his burden of showing
22 that he received a restoration of rights letter similar to the
23 one at issue in Buchmeier following his robbery conviction. The
24 only other evidence presented on this issue was the defendant's
25 own testimony, which the court did not find credible for a

1 number of reasons.

2 At the previous hearing, the defendant testified that
3 he received the first of several discharge letters from the
4 Illinois Department of Corrections in 2002 concerning his
5 robbery conviction. However, as we know, the defendant's parole
6 for the robbery conviction was revoked in 2000, and he was
7 released from custody in 2001. So, the defendant could not even
8 recall the correct year that he would have received this
9 discharge letter.

10 Moreover, defendant could not adequately explain from
11 his own memory what was contained in the discharge letter that
12 he allegedly received or provide a good explanation for why he
13 did not keep a copy of the discharge letter. In addition, when
14 asked by the court how he received the discharge letter related
15 to his robbery conviction, the defendant testified that he
16 received the letter in the mail, but he could not explain where
17 he was living at the time.

18 As noted earlier, the defendant's parole was revoked,
19 and he was in custody until the date of his discharge on
20 June 8th, 2001. It is likely that any discharge documentation
21 that the defendant may have received would have been delivered
22 to him in prison or in person at the time of his discharge from
23 prison and not mailed to him.

24 Finally I note that defendant testified that he also
25 received a discharge letter in 2005 concerning his drug

1 conviction in case number 01 CF 1860 and that he received it
2 while he was in IDOC custody. It does not make any sense that
3 the defendant would receive a letter advising him of the
4 restoration of his civil rights at a time when he was
5 incarcerated, and, in any event, this testimony is inconsistent
6 with the argument presented in the second supplemental
7 memorandum where the defendant took the position that he did not
8 have his rights restored for case number 01 CF 1860 because of
9 his incarceration.

10 Based on all the inconsistencies and inaccuracies
11 regarding these alleged discharge letters, as well as the
12 court's observation of the manner and demeanor of the defendant
13 while he was testifying, the court finds that the defendant's
14 testimony was not truthful. It appears that the defendant has
15 little regard for the truth and is willing to say whatever he
16 thinks is in his best interests at the time.

17 Therefore, based on the totality of all the evidence
18 presented on this issue, the court finds that the defendant has
19 not established that his rights were restored following his
20 robbery conviction. As such, the conviction qualifies as a
21 violent felony for purposes of Section 924(e).

22 Because the defendant now has at least three predicate
23 offenses, the court finds that the defendant does qualify for an
24 enhanced sentence under the Armed Career Criminal Act as set
25 forth in Section 924(e), and any objection to the application

1 for this enhancement is overruled.

2 Having found that the defendant qualifies as an armed
3 career criminal, the court need not reach the government's
4 contention that the defendant's conviction for mob action also
5 qualifies as a violent felony for purposes of Section 924(e).
6 However, for the sake of completeness, the court will briefly
7 address this issue.

8 The offense of mob action is set out in 720 ILCS
9 5/25-1. It provides in relevant part that a person commits mob
10 action when he engages in the knowing or reckless use of force
11 or violence disturbing the public peace by two or more persons
12 acting together and without authority of law. Mob action, as it
13 was charged in case number 08 CF 2628 under subsection (a) (1) is
14 a Class 4 felony and thus is punishable by a term of
15 imprisonment exceeding one year. That crime does not have as an
16 element the use, attempted use, or threatened use of physical
17 force against the person of another, and it is not one of the
18 offenses specifically listed under Section 924(e) (2) (B) (ii).

19 Accordingly, the court must apply a categorical or a
20 modified categorical approach to determine whether consistent
21 with the Supreme Court decision in Begay this offense fits under
22 the catch-all definition of otherwise involves conduct that
23 presents a serious potential risk of physical injury to another.

24 Initially the court notes that a mob action conviction
25 can be committed in either a knowing or reckless manner.

1 Because a reckless offense would not qualify as a violent felony
2 following Begay, the court finds that this statute is divisible
3 and will apply the modified categorical approach. This allows
4 the court to look to additional materials in the judicial
5 record, such as the charging document, for the limited purpose
6 of determining under which part of the statute the defendant was
7 convicted.

8 Here the indictment, which was provided as an exhibit
9 to the government's submission on this issue, clearly shows that
10 the defendant was charged with a knowing violation of subsection
11 (a) (1) of the statute, and the certificate of conviction
12 provided shows that he was convicted of that subsection.

13 Thus, the court must now determine whether a knowing
14 violation of that portion of the mob action statute is
15 categorically a violent felony. On this issue the court finds
16 the Seventh Circuit's opinion in *United States v. Cole*, 298 F.3d
17 659, highly persuasive. In that case the court considered
18 whether an Illinois mob action offense was a crime of violence
19 for purposes of the career offender provisions, but as we all
20 know, the definitions for crime of violence under the guidelines
21 and violent felony under the ACCA are very similar, and the case
22 law addressing these definitions can be used interchangeably.

23 In Cole the court was not concerned about the
24 distinction between a knowing violation and a reckless violation
25 because the case law at the time, which was before the Begay

1 decision, allowed for the possibility that reckless crimes could
2 qualify as a crime of violence. The court did find the statute
3 divisible in a different way, however, and concluded that the
4 mob action statute encompassed both violent and nonviolent
5 offenses. Specifically the court distinguished between the
6 violent offense of the use of force or violence disturbing the
7 peace of two or more persons set forth in subsection (a)(1) and
8 the nonviolent offense of assembly of two or more persons to do
9 an unlawful act, as set forth in subsection (a)(2).

10 Once the court determined that the defendant's mob
11 action conviction fell under the terms of section (a)(1) and
12 posed a serious potential risk of physical injury to another,
13 the court concluded that the conviction was a crime of violence.
14 Here, based on Cole, the court finds that the defendant's mob
15 action conviction qualifies as a violent felony and thus can be
16 used as another predicate offense for the ACCA.

17 The court recognizes that Cole is not directly on
18 point, and, in fact, the Seventh Circuit looked to the actual
19 conduct involved in that case, whereas this court is now
20 forbidden from doing so under the categorical approach. Thus,
21 to be clear, the court is not looking to the fact that the
22 indictment charges the defendant with engaging in a physical
23 altercation, even though both sides point to that same fact and
24 then draw different conclusions as to how much risk of harm an
25 altercation involves.

1 Instead the court finds that the mob action statute
2 necessarily requires the use of force or violence in disturbing
3 the peace, and the court believes that this type of conduct,
4 generally speaking, is conduct that poses a serious potential
5 risk of physical injury to another. Any time force or violence
6 is used, especially in a group or mob setting, there is a strong
7 possibility that the force or violence will impact either
8 directly or indirectly another person and could cause that
9 person to suffer a physical injury.

10 Based on this conclusion, the court now finds that the
11 defendant has four predicate offenses for purposes of the ACC,
12 and he clearly qualifies for the enhanced penalties under
13 Section 924(e) for his conviction on Count 2.

14 As a final note on this issue, in his supplemental
15 memorandum the defendant generally challenges the propriety of
16 using arrest reports and other information contained in the
17 presentence investigation report for determining under the
18 categorical approach whether his prior convictions qualify as
19 predicate offenses for purposes of the Armed Career Criminal
20 Act. This objection is overruled, however, as the court has not
21 used the arrest reports or other descriptions in the presentence
22 investigation report to determine the particular facts
23 underlying the defendant's convictions. Rather he has only
24 looked to the fact of conviction and the elements of the statute
25 of conviction for each of the three predicate offenses.

1 At the previous sentencing hearing, the defendant
2 indicated that he wished to challenge the career offender
3 designation because he wanted to contest everything. The court
4 pointed out that this generic type of objection was not helpful.
5 So, after taking an opportunity to consult with his counsel, the
6 defendant indicated that he wanted to challenge the career
7 offender provisions based on what he called the categorical
8 approach as set out in *Taylor v. United States*, 495 U.S. 575.
9 This objection is without merit and is overruled.

10 Under the categorical approach, the court looks to the
11 statutory elements of the defendant's past criminal convictions
12 instead of the defendant's actual conduct. Here the defendant
13 is challenging whether his two previous convictions for
14 possession with intent to deliver one to 15 grams of cocaine
15 qualifies as a controlled substance offense as that term is used
16 in Section 4B1.1(a) and as defined in Section 4B1.2(b). That
17 term is defined as an offense under federal or state law
18 punishable by imprisonment for a term exceeding one year that
19 prohibits the manufacture, import, export, distribution, or
20 dispensing of a controlled substance or a counterfeit substance
21 or the possession of a controlled substance or a counterfeit
22 substance with intent to manufacture, import, export,
23 distribute, or dispense.

24 I note that this definition is slightly different and,
25 in fact, is easier to meet than the definition of a serious drug

1 offense for purposes of the ACCA. Nevertheless, as the court
2 mentioned earlier when discussing the defendant's objections to
3 the armed career criminal enhancement, the defendant's prior
4 drug convictions are Class 1 felonies, and thus the court finds
5 that they are punishable by imprisonment for a term exceeding
6 one year. Those offenses also categorically involve the
7 possession with intent to distribute cocaine, which is a
8 controlled substance.

9 Accordingly, applying the categorical approach, the
10 court finds that the defendant's two prior drug offenses qualify
11 as controlled substance offenses for purposes of the career
12 offender guideline, and the defendant's objection to the career
13 offender guideline designation is overruled.

14 Although not raised by either party, the court notes
15 for the record what appears to be a miscalculation in
16 paragraph 44 of the presentence investigation report, which is
17 the section dealing with the career offender enhancement under
18 Section 4B1.1. That paragraph correctly indicates that the
19 applicable guideline range in this case is determined under the
20 provisions of subsection (c) (2) because of the defendant's
21 Section 924(c) conviction. Under that subsection, the final
22 guideline range is the greater of either, A, the mandatory
23 minimum consecutive penalty as required by Section 924(c), which
24 in this case is 60 months, added to both the minimum and maximum
25 of the otherwise applicable guideline range determined for the

1 counts of conviction other than Section 924(c), the Section
2 924(c) count, or, B, the guideline range determined using the
3 table in subsection (c) (3).

4 In paragraph 44 of the presentence investigation
5 report, the otherwise applicable guideline range for Counts 1
6 and 2 is listed as 100 to 125 months, which then results in a
7 total range of 160 to 185 months for purposes of Subsection
8 (c) (2) (A) after the addition of the 60 months required by
9 Section 924(c).

10 However, this is incorrect. The term otherwise
11 applicable guidelines range is specifically defined in
12 Application Note 3C to Section 4B1.1 and says that when the
13 counts of conviction, other than the Section 924(c) count,
14 qualifies the defendant as a career offender, then the otherwise
15 applicable guidelines range for those counts is the guidelines
16 range determined for those counts under Section 4B1.1(a) and (b)
17 or, in other words, the applicable range under the normal career
18 offender provisions.

19 What that means in this case is that the defendant's
20 otherwise applicable guideline range is actually 262 to 327
21 months based on a total offense level of 34 and a criminal
22 history category of six after the application of the
23 enhancements from Section 4B1.1(b). When you add the mandatory
24 consecutive 60 months to this range, the total range then
25 becomes 322 to 387 months for purposes of subsection (c) (2) (A).

1 Ultimately, however, the range under the table in subsection
2 (c) (3) is still the greater range, and, therefore, the
3 presentence investigation report properly concludes that the
4 total guideline imprisonment range in this case is 360 months to
5 life.

6 Therefore, I will adopt the guidelines calculations
7 contained in the presentence report. I am using the sentencing
8 guidelines manual effective November 1st, 2013, and the
9 guidelines imprisonment range in this case is 360 months to
10 life.

11 As to the remaining 3553(a) considerations do the
12 parties have any evidence?

13 MR. KARNER: The government does not.

14 THE COURT: Any evidence, Ms. Rippy?

15 MS. RIPPY: No, the defense does not, your Honor.

16 DEFENDANT POKE: Yeah, we do got evidence.

17 THE COURT: Okay.

18 DEFENDANT POKE: For the guidelines.

19 THE COURT: No. I'm talking about other than the
20 guidelines. I'm talking about the other 3553(a) considerations.

21 DEFENDANT POKE: But I do got some questions, if I
22 can -- if this is the time to talk now.

23 THE COURT: No. You should talk them over with your
24 attorney.

25 DEFENDANT POKE: Huh?

1 THE COURT: You should talk those over with your
2 attorney.

3 DEFENDANT POKE: Your Honor, I mean, she don't do no
4 work. Me talking to her, I mean, honestly, it ain't no good
5 because she's not -- it seem like we're not on the same page.

6 THE COURT: All right. And I'm sure she'll take some
7 time with you and address your concerns.

8 DEFENDANT POKE: I tried it already. I would just
9 speak for myself.

10 THE COURT: All right.

11 DEFENDANT POKE: I think I'm pretty competent enough to
12 do that.

13 THE COURT: Mr. Karner, do you have any argument?

14 MR. KARNER: Yes, I do briefly, Judge.

15 Your Honor, as we stand here today and reflecting on
16 the defendant's prior history of criminality, I don't know that
17 the defendant has any more insight into his own wrongdoing and
18 the responsibility of his wrongdoing today as when he was first
19 arrested so many years ago. He's a grown man. He's had the
20 opportunity of a lot of court services and a lot of life
21 experiences.

22 The man was shot because of a lifestyle he chose. He
23 chose -- he has chosen a criminal lifestyle, and that no doubt
24 contributed to his getting shot. But he came close to dying,
25 and that still didn't shake him up enough to want to respect the

1 law and conform his conduct to the requirements of the law. As
2 he's demonstrated up until this very day, he has no insight into
3 his own criminality.

4 And one of the disturbing things about Dayton Poke is
5 that when he was in custody in this case, both before and
6 post-trial, at a time when he should be on his best behavior, he
7 was abusive both physically and I guess mentally abusive to the
8 people who worked in the jails and the correctional staff. They
9 had the misfortune of crossing paths with this guy.

10 He's got a terrible criminal history. I know your
11 Honor has gone through it extensively. He's had the benefit of
12 court services. He's had the benefit of leniency. And he's
13 shrugged his shoulder on that and turned his head away from that
14 and gone on to continue his life of lawlessness.

15 He has absolutely no rehabilitative potential. He's
16 shown no remorse into his conduct. He's taken no accountability
17 for his conduct. He's here because of his actions, not because
18 of any of the decisions or comments made by the team of lawyers
19 that has represented him since day one.

20 He has shown no regard for the court's authority and
21 treated these court proceedings as kind of a game, a chess
22 match, where he just tries to throw anything up there to evade
23 responsibility for his conduct, his misconduct. And with that,
24 Judge, his behavior and his way of thinking has left this court
25 with precious few alternatives but to impose a substantial

1 sentence of imprisonment.

2 THE COURT: Attorney Rippy.

3 MS. RIPPY: At this time, your Honor, I would like a
4 few minutes with Mr. Poke just to confer with him about this.

5 THE COURT: Sure.

6 MS. RIPPY: Thank you.

7 THE COURT: Mr. Poke, you said that you would like to
8 speak for yourself. I will give you an opportunity to do that
9 as soon as your attorney has made her argument.

10 DEFENDANT POKE: Can I ask you about the -- you never
11 gave me my response on the Moncrieffe v. Holder case.

12 THE COURT: Your what?

13 DEFENDANT POKE: When you said the category approach
14 earlier, I think you misquoted a case law that I said. I said
15 Moncrieffe v. Holder last time to challenge my priors. You said
16 some other case.

17 THE COURT: The case that you told me was --

18 DEFENDANT POKE: Moncrieffe v. Holder.

19 THE COURT: -- Taylor v. United States.

20 DEFENDANT POKE: Excuse me?

21 THE COURT: Taylor v. United States.

22 DEFENDANT POKE: Taylor, yeah, the category approach,
23 and I also told you Moncrieffe v. Holder, and you said you was
24 going to took at it for me.

25 THE COURT: I did take a look at it. I'll take a look

1 at it again. Let's take a five-minute recess.

2 (Brief recess.)

3 THE COURT: All right. I've reviewed Moncrieffe again.
4 It's not directly applicable to either career offender or armed
5 career criminal designations, and I don't believe it adds
6 anything to what I've already said referencing Taylor.

7 So, with that, I'll take your argument.

8 MS. RIPPY: Your Honor, other than what I've already
9 included in our sentencing memorandums, I don't have anything
10 further than that. I know Mr. Poke would like to speak to your
11 Honor.

12 DEFENDANT POKE: Yeah, I'd like to talk.

13 THE COURT: All right. Mr. Poke, you have an
14 opportunity to address the court.

15 DEFENDANT POKE: Yes, I will. I will.

16 THE COURT: I'll be glad to hear anything you have to
17 say.

18 DEFENDANT POKE: Yeah. Okay. First, I had filed two
19 motions, an Equal Protection Clause motion that I never got no
20 response on, and I also filed a motion for ineffective
21 assistance of counsel I never got no response on that I done ask
22 my counsel about, but she failed to give me copies of the actual
23 filing with document numbers, you know what I'm saying, that I
24 would like you to order her to give to me or whatever happened
25 with that.

1 MS. RIPPY: I have copies available on the counsel
2 table for Mr. Poke today.

3 DEFENDANT POKE: Okay. I need them today, you know
4 what I'm saying.

5 THE COURT: You want to sit down and look at them?

6 DEFENDANT POKE: Huh?

7 THE COURT: Do you want to sit down --

8 DEFENDANT POKE: No. I just need it, you know, for my
9 appeal. I'm getting my appeal together, you know what I'm
10 saying.

11 All right. You say Moncrieffe v. Holder don't apply to
12 me, but it stipulates that you got -- you determine is it a
13 felony or not by the Controlled Substance Act text.

14 So, it ain't up to the jury, it ain't up to the
15 prosecutor, and it ain't up to you to decide was the 1.2 grams a
16 felony or not. It's up to the Controlled Substance Act, which
17 the government got me at -- they got me at 41(b) (1) (C), which
18 states it should be a two-year maximum in the case of Schedule I
19 and II controlled substance if there's no drug amount on the
20 indictment.

21 Now, I got 1.2 drug amount on the indictment, which
22 classified me as 41(b) (4). It can't be 41(b) (1) (D) because the
23 drug amount don't carry no maximum of five years. So,
24 therefore, my drug amount is a misdemeanor, and I supposed to be
25 able to argue this at sentence. So, by that being a

1 misdemeanor, there's no drug trafficking which the 60 months
2 that you adding onto the time, you know what I'm saying.

3 THE COURT: Which offense are you talking about?

4 DEFENDANT POKE: Huh?

5 THE COURT: Which offense are you taking about?

6 DEFENDANT POKE: The predicate offense.

7 THE COURT: Well, there are --

8 DEFENDANT POKE: The 1.2 grams, which you're using to
9 career me with.

10 THE COURT: Right. There are four predicate offenses.
11 Which one are you talking about? Can you give me a number?

12 DEFENDANT POKE: Count 1.

13 THE COURT: Count 1 of the -- oh, that's not a
14 predicate offense.

15 DEFENDANT POKE: I mean, I'm sorry. I'm sorry. The
16 offense, whatever, Count 1. I'm talking about Count 1, 1.2
17 grams, of my indictment.

18 THE COURT: All right.

19 DEFENDANT POKE: So, by that not being a felony under
20 United States v. -- Moncrieffe v. Holder, Supreme Court ruling,
21 there is no drug trafficking, and there's no additional 60
22 months. And it also states that the state law got to interact
23 with the federal law, which is the -- the prior two drug cases
24 that you using, you're saying them felony offenses, but under
25 the Controlled Substance Act under Lopez v. Gonzales, United

1 States Supreme Court ruling, states a conviction under state law
2 constitute a felony punishable under the Controlled Substance
3 Act only if it's prescribed conduct punishable as a felony under
4 the federal law.

5 THE COURT: Do you have a cite you want to put on the
6 record for that?

7 DEFENDANT POKE: Yeah. Lopez v. Gonzales.

8 THE COURT: Okay. Is there a --

9 DEFENDANT POKE: G-o-n --

10 THE COURT: No, no, no. Is there a citation to it?

11 DEFENDANT POKE: Citation?

12 THE COURT: Right. That tells me what court it's from
13 or --

14 DEFENDANT POKE: A Supreme Court ruling.

15 THE COURT: Is there a cite?

16 DEFENDANT POKE: Yeah. It's a cite, you know.

17 MS. RIPPY: Mr. Poke has the cite at 549 U.S. 47, I
18 believe.

19 DEFENDANT POKE: And with all that then said, that
20 should put my guidelines at a level 14 because without the two
21 drug offenses which makes the 922(g) go to a level 24, which
22 makes the Count 1 to go to 30 years to life, I mean, this right
23 here stops all of that, you know what I'm saying? You all took
24 a misdemeanor case and took it to 30 years to life, and I'm
25 trying to see how it got there when the law states that I should

1 be at a level 14, 37 to 46 months, because the two prior drug
2 cases, you can't use that because them considered misdemeanors,
3 and then the offense that I'm found guilty on, that's considered
4 a misdemeanor, and I'm saying like how ain't nobody
5 understanding the law. Everybody just going around the law and
6 not applying the law.

7 This stuff apply to me. And everybody keeps saying
8 that it don't apply, but ain't nobody showing me or giving me no
9 case law as how it don't apply. I'm trying to see how a
10 misdemeanor, which the law considers a misdemeanor, go from
11 18 months. For my Count 1, the max on it is 18 months. How did
12 that get from 30 to life? I'm asking.

13 THE COURT: Well, that's a contention you can take up
14 with the Court of Appeals.

15 DEFENDANT POKE: The Court of Appeals. But I mean, you
16 sentencing me right now. These are sentencing, you know what
17 I'm saying, challenges. I'm asking you how Moncrieffe v. Holder
18 don't apply to me. And it got all these stipulations in here
19 about my situation that they saying that you ain't allowed to
20 do, but we doing it -- but we still going on doing it today.
21 So, I feel like, man, what's up with the law. Can I get
22 sentenced --

23 THE COURT: First of all, Moncrieffe is an immigration
24 case.

25 DEFENDANT POKE: It got something to do with

1 immigration, but also it's talking about the felony charges that
2 count. This stuff ain't over in Mexico that they talking about.
3 They talking about the stuff here that's considered with the
4 federal and the state. They determine what's going on with us
5 with the immigration laws and saying what apply to me apply to
6 him. I mean, I got clearly understanding of this -- I mean,
7 this is my life here. So, you know, I didn't read it like a --
8 you know what I'm saying. I ain't trying to put no stress on
9 the court. I just want the court to sentence me by what the law
10 prescribe and not by the court's own personal feelings.

11 THE COURT: All right. I promise you I'll sentence you
12 in accordance with the law as I understand it. If you and I
13 have a disagreement as to how the law applies in this case or
14 the effect of the law, then that's something that you can
15 certainly bring to the Court of Appeals' attention, and I'll
16 advise you of your rights to do that after we get done with
17 this.

18 DEFENDANT POKE: All right. But, you know, I still --
19 I mean, can I get an answer about -- you know what I'm saying?
20 I still need to -- because I'm trying to figure out is we going
21 by the law or is we going by our own personal feelings. I
22 understand I got a Court of Appeals, but this says I supposed to
23 challenge this at sentencing.

24 THE COURT: I promise you I'll follow the law as I
25 understand it.

1 DEFENDANT POKE: So, what? This the part when I
2 apologize?

3 THE COURT: Well --

4 DEFENDANT POKE: I mean, I'm trying to see like -- is
5 there anything else after this?

6 THE COURT: You can say anything you want to say.

7 DEFENDANT POKE: Okay. You know, well, I apologize to
8 my family, you know what I'm saying. I thank Mark Karner for
9 bringing me over here and brightening me with all this nice
10 knowledge over here that I done learn. I know how to apply it
11 now, you know what I'm saying.

12 I'd like to apologize for my family. I'd like to
13 apologize to the marshals and they families and everybody else
14 that became a victim of, you know what I'm saying, of the
15 government authority, you know what I'm saying. Because you
16 turn on the TV every day, it's only -- it's mostly the federal
17 government or people that's working for the government is the
18 ones committing all the crimes. I mean, the big crimes. They
19 just don't get caught. When they do it, they do it over a
20 certain amount of years, you know, and they get a slap on the
21 wrist.

22 Here it is me, you know what I'm saying, a black man,
23 that went through a lot in my life. I ain't chose to get shot.
24 I ain't chose to go -- if I had a choice, I would have been a
25 lawyer. I would have been a better lawyer than Mark Karner.

1 And he's standing look like -- look at me, like this what I
2 supposed to go through, like. Don't nobody want to go through
3 what I went through, you know what I'm saying. I'm happy that I
4 made it to be here.

5 And sometimes you get at a point of your life that you
6 got to learn self control when you ain't taught it. When you
7 just in the jungle and you fighting to live every day and then
8 you put a person in jail and you just say, hey, be nice, I mean,
9 you got to teach -- you got to reprogram a person. That's what
10 being in jail about. Program. And people don't change over
11 night. It take time.

12 So, for everybody look for me to just come in here and
13 be like I'm this nice guy, I'd be lying to myself. But at the
14 same time I have worked on myself, you know what I'm saying. I
15 got -- while I've been fighting my case, I also been doing other
16 things, you know. I'm trying to go to school. I got my test
17 scores, you know what I'm saying. I got certificates. I'm in
18 drug class right now. And you know I constantly file lawsuits
19 on you all. So, you know that's work.

20 And, I mean, once a person get to a certain age, he --
21 I mean, you grow out of what you used to do, you know what I'm
22 saying. And then you all taking my prior cases that I was
23 manipulated in the state, ain't no -- not to cop out to charges,
24 knowing that you all was going to bring me over here and take a
25 couple of fights, aggravated fights, small drug amounts, and

1 say, man, this guy needs to be in jail for 30 years, you know
2 what I'm saying. I ain't understanding it.

3 They say it's fair, the justice system fair, but, I
4 mean, I hope I get some today, you know what I'm saying, some
5 fairness, you know. I mean, there really ain't too much I can
6 say, you know what I'm saying. You know, I apologize to the
7 court if they don't like how I talk or how, you know what I'm
8 saying, I've been presenting myself, you know what I'm saying,
9 but as you see, I did get better. At least I am trying, you
10 know what I'm saying. And I'll continue trying, no matter what
11 happen today. You know, I guess that's it, man.

12 THE COURT: Okay. Why don't you have a seat.

13 I have considered the presentence --

14 MS. RIPPY: Your Honor, if I may.

15 THE COURT: Sure.

16 MS. RIPPY: Pardon my interruption. Mr. Poke indicated
17 that he would like your Honor to take account of some classes
18 that he's completed and he's been participating in, if I may.

19 THE COURT: All right. Sure.

20 MR. KARNER: I have no objection to the admission of
21 those exhibits. I think they should just be marked, though.

22 THE COURT: Could you mark them as Defendant's
23 Sentencing Exhibits 1 and 2?

24 DEFENDANT POKE: Do you need the copy of -- was I
25 supposed to add my mental health records up in there or --

1 THE COURT: I'll get you a copy before you leave.

2 DEFENDANT POKE: I'm saying do I suppose to give you
3 the medical records, too.

4 THE COURT: No.

5 DEFENDANT POKE: Oh, okay.

6 MS. RIPPY: I'm not sure if we are at a number for
7 defense exhibit.

8 THE COURT: I think it's Sentencing Exhibit -- mark it
9 A and B.

10 (Said documents were tendered to the court.)

11 THE COURT: I'll ask my minute clerk to make copies of
12 these, and then I'll give you the originals back.

13 DEFENDANT POKE: All right. I appreciate it.

14 THE COURT: I've considered the presentence report and
15 accompanying materials. I've considered the written submissions
16 and arguments of the parties, as well as the statement of the
17 defendant. I've considered the sentencing guidelines
18 calculations and all of the other sentencing factors contained
19 in Section 3553(a).

20 Among those factors are the nature and circumstances of
21 the offense and the history and characteristics of the
22 defendant. I also recognize the need for the sentence imposed
23 to reflect the seriousness of the offense, to promote respect
24 for the law, and to provide just punishment for the offense, to
25 afford adequate deterrence to criminal conduct, to protect the

1 public from further crimes of the defendant, to provide the
2 defendant with needed educational or vocational training,
3 medical care, or other correctional treatment in the most
4 effective manner, and the need to avoid unwarranted sentence
5 disparities among defendants with similar records who have been
6 found guilty of similar conduct.

7 I believe that the guidelines calculations in this case
8 provide an accurate starting point to evaluate the Section
9 3553(a) factors. The guideline range has incorporated the facts
10 that the offense involved 1.2 grams of cocaine base and that the
11 defendant is an armed career -- or sorry -- that the defendant
12 is a career offender and that he is an armed career criminal.
13 I'm sorry. The guidelines -- as I said, the guidelines range
14 doesn't have anything to do with the fact that he's an armed
15 criminal. I think it's just the fact that he's a career
16 offender.

17 All right. In mitigation, the defendant has an
18 acknowledged history of drug and alcohol abuse and is willing to
19 participate in treatment. Also according to the defendant, his
20 family is aware of his arrest and prosecution and remains
21 supportive. He's expressed remorse for what he's done.

22 There are significant aggravating factors in this case.
23 The defendant has admittedly been unemployed since 1995.
24 Despite having served prior terms of incarceration, the
25 defendant has continued to recidivate. He's used alias names.

1 He was convicted of juvenile criminal and traffic offenses for
2 which criminal history points were not assigned. He has a
3 history of noncompliance with juvenile probation, parole, and,
4 in fact, he committed a serious traffic offense six days after
5 being released on parole. He's failed to comply with the
6 conditions of conditional discharge and court supervision.

7 Despite his criminal record, the defendant persists in
8 selling drugs and carrying firearms to facilitate his drug
9 dealing. I have no doubt in my mind that if the defendant
10 perceived that another person is interfering with his drug
11 business, he would not hesitate to use his firearm, which we all
12 know could result in catastrophic consequences not only to other
13 people, but to himself. I've witnessed how volatile and
14 incendiary he is when he ripped off his shirt in the courtroom
15 and how he's acted during these proceedings. His past criminal
16 behavior is violent and antisocial. He has no regard for
17 authority, the law, societal standards of behaviors, or the
18 rights or welfare of other people. He's extremely incorrigible.

19 He has not complied with the rules and regulations of
20 the places where he has been incarcerated. As a couple
21 representative examples, we see from the presentence report that
22 during the time he was in the McHenry County Jail, we see the
23 deputy then spoke with the counselor, who advised that the
24 defendant was discussing his issues with masturbation and had
25 advised her that he had been doing well, as he had not

1 masturbated in a few days. She stated that she did not comment,
2 and there were very few minutes -- and that there very few
3 minutes of awkward silence before the defendant stated, "But
4 there are no cameras in here. So, I can do it in here," and he
5 then proceeded to remove his penis from his pants.

6 At another point, it shows that the defendant actively
7 resisted the officers' attempts as they tried to gain control of
8 him. A few minutes later, the officers were able to secure
9 control of the defendant and escorted him into isolation, and
10 the defendant told the officers, "I am going to kill one of you
11 before I leave. That is my goal."

12 Since the defendant's been at the MCC, the defendant
13 stated in the presence of Lieutenant Croll, "I will kill you and
14 motherfuckin' kids, Croll. I promise that. Chicago is a small
15 place," and he would make it happen.

16 At another point at the MCC, the officer stated, "I
17 arrived at Inmate Poke's cell, and he was standing in front of
18 his bed masturbating. I told him to put his clothes back on,
19 but he did not stop his actions."

20 These and the other reports from the incarcerating
21 institutions paint a picture of a person who is depraved and
22 pernicious.

23 In both his sentencing memorandum and supplemental
24 sentencing memorandum, the defendant asks the court to impose a
25 sentence in the 15 to 20 year range based on the Section 3553(a)

1 factors. Not only is this requested sentence well below the
2 advisory guidelines range, which is 360 to life, given the
3 defendant's status as a career offender and his 924(c)
4 conviction, but it is also at odds with the mandatory minimum
5 sentence as I have determined are applicable in this case.

6 Because there is no basis to go below the statutory
7 minimum sentence in this case, the minimum sentence the court
8 can impose is a total of 20 years, which would be 15 years on
9 the Section 922(g) offense and a consecutive five-year sentence
10 on the Section 924(c) conviction.

11 Accordingly, although the court cannot impose a
12 sentence of only 15 years, the court will consider the
13 defendant's request as a motion for a downward variance to a
14 sentence of 20 years' imprisonment.

15 Defendant raises several arguments in support of his
16 request for a variance. For instance, the defendant generally
17 argues that this sentence would reflect the seriousness of the
18 offense, promote respect for the law, provide just punishment,
19 afford adequate deterrence, and protect the public from further
20 crimes of the defendant. While there is no doubt that a
21 sentence of 20 years would be significant, I do not find that it
22 would be sufficient for a defendant who qualifies as a career
23 offender.

24 My sentencing analysis takes into consideration the
25 defendant's designation as a career offender. In order to

1 qualify as a career offender, a defendant must be convicted of a
2 felony that is either a crime of violence or a controlled
3 substance offense. In this case the defendant's conviction for
4 possession with intent to distribute cocaine base, a controlled
5 substance offense, which by itself qualifies the defendant as a
6 career offender, that drug conviction, coupled with the Section
7 851 notice applicable in this case, normally carries with it a
8 wide sentencing range of anywhere from zero to 30 years.

9 However, in Title 28, Section 944 (h), Congress directed
10 the Sentencing Commission to assure that the guidelines specify
11 a sentence to a term of imprisonment at or near the maximum term
12 authorized for certain categories of offenders, which the
13 Sentencing Commission has since dubbed career offenders. Given
14 this congressional intent, the court finds that the defendant
15 deserves a substantial sentence for his felony drug conviction.
16 Indeed, if the court were to consider the guideline range that
17 would have been applicable if the defendant did not possess a
18 firearm at all, he would still be looking at an advisory
19 imprisonment range of 262 to 327 months on Count 1, given the
20 relatively small amount of drugs that were actually recovered.

21 Given this otherwise applicable range, the court finds
22 that a sentence significantly higher than the 20-year minimum is
23 appropriate in this case in order to accurately take into
24 account all of the defendant's current convictions.

25 In his supplemental sentencing memorandum, the

1 defendant asks the court to consider the degree to which his
2 sentencing range is increased because of the career offender
3 designation and the enhancement under the Armed Career Criminal
4 Act. This argument carries little weight in my opinion,
5 especially in a case like this where the career offender
6 designation provides an accurate assessment of the defendant's
7 lengthy criminal history.

8 As the government points out in its response, the
9 defendant has been convicted of numerous juvenile, traffic, and
10 criminal offenses in his lifetime, including two previous felony
11 drug offenses. Rather than learning from any of these mistakes,
12 the defendant has continued to engage in a life of crime and has
13 a total of 25 criminal history points or nearly twice the amount
14 needed for the highest criminal history category of six and is
15 properly characterized in every sense of the term as a career
16 offender.

17 There is a good reason the defendant is characterized
18 as a career offender. He is a longstanding, chronic, and
19 inveterate criminal. In his first sentencing memorandum, the
20 defendant states a sentence in the 15 to 20 year range would
21 remove Mr. Poke from society for a lengthy period of time while
22 still giving him an opportunity to rehabilitate and return to
23 society a good and productive citizen. But the defendant has
24 had many opportunities to reform his way, but has steadfastly
25 refused to do so.

1 I'm encouraged to see these exhibits that the defendant
2 has presented in the sentencing hearing this morning. I hope he
3 has reformed his ways. I hope he has decided that the cost of
4 continuing the life that he's led so far is not worth the
5 benefit in doing so and that he'll change his life around.
6 However, from everything that I've seen about him and I've
7 witnessed and I've reviewed and I've considered, he hasn't made
8 that move. He hasn't made that decision. He hasn't come to
9 that monumental point in his life where things are going to be
10 different. Therefore, the court declines to ignore the career
11 offender designation which the defendant unfortunately has
12 brought upon himself.

13 The defendant also argues in his sentencing memorandum
14 that his difficult upbringing and lack of parental guidance as a
15 youth supports a sentence below the guidelines range. He
16 brought that to my attention again this morning. In particular,
17 the defendant notes that his life has always included gangs,
18 guns, selling or using drugs, and violence, and that he first
19 started selling drugs on the street corner at the age of ten.

20 The defendant does acknowledge, however, that this
21 upbringing affords him no excuse or justification for his
22 misconduct. I agree with him on that point. There are many
23 people who grew up in that same neighborhood, experienced those
24 same horrible events in their lives, but still grew up to be
25 hardworking, productive members of society that don't break the

1 law, that don't get put into prison.

2 The court will certainly keep these considerations in
3 mind as part of its Section 3553(a) analysis, but the court
4 declines to impose a sentence below the advisory guidelines
5 range on account of his difficult childhood. Under Section
6 5H1.12 of the guidelines, lack of guidance as a youth and a
7 disadvantaged upbringing are factors that were not ordinarily
8 relevant in determining whether to grant a departure from the
9 guidelines. Although the Seventh Circuit has made clear in
10 cases such as *United States v. Schroeder*, 536 F.3d 746, that the
11 concept of departures has been rendered obsolete in post-Booker
12 sentencing, the district court may apply those departure
13 guidelines by way of analogy in analyzing the Section 3553(a)
14 factors.

15 The court is also obligated to consider the policy
16 statements of the Sentencing Commission as part of its Section
17 3553(a) analysis, including Section 5H1.12. Here the court
18 agrees with that policy statement and with the defendant's
19 candid acknowledgment that a defendant's difficult upbringing
20 should not be used as a crutch or an excuse for criminal conduct
21 committed as an adult. This is especially true in a case like
22 this one where the defendant's involvement in drug trafficking
23 may have helped create similar difficulties for other children
24 in the community.

25 The defendant also asks the court to consider his

1 medical issues in determining an appropriate sentence. The
2 defendant reports that he is in poor health, has been shot or
3 otherwise seriously injured on a number of occasions, and that
4 he has pain 24 hours a day seven days a week. The defendant
5 also reports a history of post-traumatic stress disorder,
6 antisocial personality disorder, and anxiety attacks.

7 The court will consider these characteristics of the
8 defendant, but finds that this does not warrant a sentence below
9 the advisory guidelines range. The policy statement contained
10 in Section 5H1.4 of the guidelines manual provides that a
11 defendant's physical condition may be relevant in determining
12 whether a departure is warranted if the condition is present to
13 an unusual degree and distinguishes the case from the typical
14 cases covered by the guidelines.

15 Likewise, the policy statement in Section 5H1.3
16 suggests that mental and emotional conditions could be relevant
17 in determining whether a departure was warranted if the
18 conditions are present to an unusual degree and distinguish the
19 case from the typical cases covered by the guidelines.

20 I agree with both of these policy statements and here,
21 by way of analogy to the 3553(a) factors, the court finds that
22 none of the defendant's medical issues or mental health issues
23 are so out of the ordinary or present to such an unusual degree
24 as to distinguish the defendant from the typical cases covered
25 by the guidelines.

1 Moreover, the defendant has not presented any argument
2 or evidence to show that the Bureau of Prisons would not be able
3 to provide the defendant with any appropriate medical or mental
4 healthcare while he's incarcerated.

5 Accordingly, the court declines to impose a sentence
6 below the advisory guidelines range on account of the
7 defendant's medical and mental health conditions.

8 The court also points to the fact that during the
9 course of these offenses, the firearm was never discharged and
10 that he did not make any attempt to use the firearm during his
11 arrest. These would certainly be aggravating factors, but in
12 the court's view, the absence of an aggravating factor does not
13 equate to a justification for a downward variance.

14 The defendant also argues that the court should
15 consider his cooperation with the government as part of its
16 3553(a) analysis, including the fact that he signed a proffer
17 agreement and met with the government. In response to this
18 argument, the government argues that the defendant should not be
19 rewarded for his proffer interview because some of that
20 information provided by the defendant was untruthful, and none
21 of the information has provided assistance to the government in
22 any ongoing investigation.

23 The court recognizes that it can consider a defendant's
24 cooperation even in the absence of a 5K1.1 motion from the
25 government, but in this case the court finds that the defendant

1 is not entitled to any reduction in his sentence on that basis.
2 I credit the government's assessment of the cooperation that was
3 provided, as it is in the best position to evaluate the proffer
4 interview, and the court is unwilling to give any credit to a
5 defendant who provides untruthful information. However, I will
6 give some mitigating consideration to the defendant because of
7 what he terms assistance to the government. But for all these
8 reasons, the court declines to impose a sentence below the
9 advisory guidelines range based upon the defendant's
10 cooperation.

11 Finally, the court has considered the defendant's
12 willingness to participate in treatment for substance abuse and
13 anger management issues. As I said, I hope that the defendant
14 follows through, and I give him credit for having the intention,
15 and the court will make a recommendation to the Bureau of
16 Prisons that he be allowed to participate in such programs while
17 incarcerated. This factor, however, is not sufficient to
18 warrant a sentence below the advisory guidelines range.

19 In view of the foregoing, I have determined that a
20 sentence within the guideline range is the most appropriate
21 sentence in this case. I conclude that a sentence sufficient
22 but not greater than necessary to comply with the purposes set
23 forth in paragraph two of Section 3553(a) is as follows.

24 Probation is not authorized in this case. I have
25 determined that the total term of incarceration for all the

1 counts of conviction should be for 420 months. To structure my
2 sentence, to get there, I break the sentence down as follows.

3 The defendant is hereby committed to the custody of the
4 United States Bureau of Prisons to be imprisoned for a total
5 term of 360 months on Count 1 and 180 months on Count 2. Those
6 terms are to be served concurrently, and both are to be served
7 consecutively to a 60-month sentence on Count 3.

8 I will note that the defendant's designation as an
9 armed career criminal was not a factor in arriving at this
10 sentence. If the defendant was determined not to be an armed
11 career criminal, I would still have imposed a total sentence of
12 420 months. My sentence would have been broken down as follows.
13 360 months on Count 1 and 120 months on Count 2 to be served
14 concurrently and both consecutive to a 60-month sentence on
15 Count 3, for a total term of 420 months. I chose this
16 particular sentence within the guideline range based on those
17 considerations which I have previously stated.

18 I will recommend to the Bureau of Prisons that the
19 defendant be placed in a facility which can provide him with a
20 residential drug abuse treatment program and allow him to
21 participate in counseling which will assist the defendant in
22 dealing with anger management and mental health issues.

23 Upon release from imprisonment, the defendant shall
24 serve a term of supervised release of five years on each of
25 Counts 1, 2, and 3. They're to be served concurrently. The

1 defendant shall comply with the standard conditions contained in
2 the supervised release order and shall also comply with the
3 following conditions.

4 The defendant shall not possess a firearm, ammunition,
5 destructive device, or any other dangerous weapon. The
6 defendant shall cooperate in the collection of DNA as directed
7 by the probation officer. The defendant shall participate in a
8 mental health evaluation and treatment program deemed
9 appropriate by the probation office. The defendant shall
10 participate in any substance abuse counseling program deemed
11 appropriate by the probation department. In addition, the
12 defendant shall submit to one drug test within 15 days of
13 release from imprisonment and random drug tests thereafter
14 conducted by the United States Probation Office not to exceed
15 three tests per week or 104 tests per year. The defendant is
16 ordered to refrain from operating a motor vehicle without a
17 valid driver's license and statutorily mandated insurance.

18 In regard to a fine, I've considered the factors
19 contained in Section 3572 and Guideline Section 5E1.2. The
20 court declines to impose a fine in this case because defendant
21 is unable to pay a fine and is not likely to be able to do so.

22 I'll order the defendant to pay a special assessment of
23 \$100 on each count. That is due immediately, for a total of
24 \$300. If the special assessment is not paid in full during the
25 term of incarceration, then during his term of supervised

1 release and as an additional condition of that supervised
2 release, the defendant shall pay to the Clerk of Court at least
3 10 percent of the defendant's gross earnings minus federal and
4 state income tax withholding until the special assessment is
5 paid.

6 Attorney Rippy, have I addressed all your arguments,
7 including your arguments in mitigation?

8 MS. RIPPY: Yes, your Honor.

9 THE COURT: I'll enter a preliminary order of
10 forfeiture forfeiting the defendant's right, title, or interest
11 in the firearms or ammunition involved in this offense.

12 Do the parties know of any reason other than those
13 already presented why the sentence should not be imposed as
14 stated? Mr. Karner?

15 MR. KARNER: No, your Honor.

16 THE COURT: Ms. Rippy?

17 MS. RIPPY: No, your Honor.

18 THE COURT: I will enter a judgment of conviction and
19 order the sentence imposed as stated.

20 Mr. Poke, you have a right to appeal the adjudication
21 of guilt in this case, as well as the sentence imposed by me.
22 In this case you have entered into a -- I'm sorry. Strike that.

23 Any notice of appeal must be filed within 14 days of
24 the entry of judgment. You or your attorney may file a notice
25 of appeal. If you so request, the clerk will prepare and file a

1 notice of appeal in your behalf. If you are unable to pay
2 appeal costs, you have a right to ask for permission to appeal
3 in forma pauperis. If you are unable to afford an attorney, the
4 Court of Appeals may appoint an attorney to represent you on
5 appeal at no cost to you. Ms. Rippy will remain your attorney
6 on appeal unless the Court of Appeals appoints another attorney
7 to represent you on appeal.

8 DEFENDANT POKE: Can you make sure she put in my
9 appeal?

10 THE COURT: Pardon me?

11 DEFENDANT POKE: Can you make sure she put in my direct
12 appeal? I'm just getting it on record because if it don't get
13 on record, they're going to say I never asked for it.

14 THE COURT: Attorney Rippy, will you make sure that he
15 files a proper notice of appeal?

16 MS. RIPPY: Yes, your Honor, I will.

17 DEFENDANT POKE: I have another request. Can I request
18 to go to Pekin, Illinois?

19 THE COURT: I'll make the request. Or I'll make the
20 recommendation.

21 DEFENDANT POKE: I got another question. Honestly,
22 though, seriously, though --

23 THE COURT: We can't hear you from back there.

24 DEFENDANT POKE: I understand, Judge, that you feel
25 like you doing your job. But, you know, we going to be

1 realistic here, though, you know what I'm saying. We're going
2 to bring this down under earth terms, you know what I'm saying.
3 You know, I can't do nothing but accept the 35 years, but
4 actually in your mind do you really think a 1.2-gram user drugs,
5 which I didn't provide the evidence that I used, that's worth
6 35 years to you, honestly? You know what I'm saying.

7 I just want to hear it because, I mean, it been so
8 much -- see, most of these people don't know the law, you know
9 what I'm saying, but unfortunately I know the law, you know what
10 I'm saying, and everything that was did in here was against the
11 law. No matter what my criminal history is or what I did in
12 them jails don't determine what goes on in this courtroom. What
13 determines in this courtroom is the law, not your personal
14 feelings, you know what I'm saying.

15 So, you know, I'm trying to figure -- I knew I was
16 going to get that time, but this is what I'm trying to figure.
17 If they got you here to uphold the law and protect my rights,
18 you know what I'm saying, I mean, you ain't doing a good job at
19 it because, I mean, clearly, you know, no disrespect, but I'm
20 saying I put stuff in black and white. The government ain't
21 supplied nothing.

22 It's like basically he got everything granted on a
23 friend basis. So, I'm thinking like is your -- do you think his
24 friendship is more important than your reputation as being
25 truthful, uprighteous, and a role model? Not for just Rockford.

1 For the whole United States. I mean, for the whole Illinois.
2 Because you is a federal judge, and for you to handle this
3 situation like this, it was unjust.

4 I mean, you all disregarded the law to the fullest, you
5 know what I'm saying. And I came in here with everything I had
6 that I read. Even I supported new case laws on the ruling. And
7 even today you got the President, you got the Attorney General
8 talking about these tough sentences on drug convictions, and
9 here I come in here with 1.2 grams, and you give me 35 years.
10 Come on, man. They going to look at this like it ain't
11 realistic with the appellate court, you know what I'm saying.

12 I mean, you know, I thought today we was going to come
13 in here, the circus was going to stop, you know what I'm saying.
14 Come on, man. This is circus court, and that shouldn't be
15 allowed here. It shouldn't, though, honestly, you know what I'm
16 saying. We should have handled everything in a professional
17 manner.

18 Don't look at me as my past. Look at me as the future.
19 Look at what I know now, you know what I'm saying. Everything
20 that I did I was forced to do because you all was trying to put
21 me in predicaments to where I couldn't prepare a proper defense
22 to fight this case by putting me in Ogle County, by putting me
23 in McHenry County. But when you put me in a place where I can
24 read, there's no problem with me with the staff, you know what
25 I'm saying. So, I mean, that's part of my right. That's like

1 the Eighth Amendment, right? And so many other rights been
2 violated, you know what I'm saying.

3 So, from the beginning to the end, you know what I'm
4 saying, you deny everything that I presented. Like, you ain't
5 grant one thing. And then you tell me to -- if I need some --
6 did file my own pro se motions -- you started me with the motion
7 for new counsel. And then when I filed motions, you strike them
8 saying that I got counsel, but I done showed you counsel, she's
9 not competent to handle her own affairs, let alone mine. She
10 can't answer any question that you put up here. No disrespect.
11 But I'm saying if we're going to have people in here upholding
12 the law, they should not just go to school to get a degree.
13 They should actually know the law.

14 Because I know they feel a little disrespected because
15 a street person -- like everything that's all said about me,
16 came in here and made you all look bad because I was presenting
17 facts of the law, and I was quoting everything right, and I know
18 what I'm talking about, and the only answer that you can give
19 was no answers, you know what I'm saying. And then to look over
20 that, you know what I'm saying. I mean, you know what I'm
21 saying.

22 I don't want to throw the race thing up in here. I
23 don't want to be like, man, you all doing this because I'm
24 black, you know what I'm saying. I didn't even bring that in
25 the courtroom. I brought the law in here, and you all still

1 disregarded it, you know what I'm saying. I mean, just man to
2 man, I'm trying to see like by me knowing the law, I really like
3 think like what's in your head, you know what I'm saying,
4 because --

5 THE COURT: Okay. Well, let me answer the best way I
6 can. First of all, the sentence that I passed down in this case
7 and my rulings in this case, my conduct in this case is in no
8 way connected with a relationship that I have with Mr. Karner.
9 Mr. Karner is a good lawyer. I have the utmost respect for him
10 and his ability as an attorney and as an Assistant United States
11 Attorney. I've known him for a long period of time. I can
12 honestly say I don't have any social relationship with him at
13 all. I don't think I've ever been with him in a social setting.
14 The only time I've ever seen him is incidental contact and the
15 times that I see him in court.

16 I've said this many times, but I think the worst part
17 of my job is sentencing. It's the thing that I dislike. I take
18 no pleasure in looking a man in the eye and telling him that I'm
19 going to order him to go to prison for a long period of time,
20 for any period of time. I don't feel worthy to tell a person
21 that I'm going to take part of his life away from him.

22 But this is a part of my job. It's a duty that's been
23 imposed on me, a duty that I accept when I took the oath as a
24 judge, and I give very serious and sober and deep approach when
25 I'm looking at sentencing. I'm sorry this happened to you. I

1 wish it didn't happen to you. I wish your life was different.

2 DEFENDANT POKE: Yeah. I mean, unfortunately, I'm
3 black. So, no, it wasn't going to be different. And then for
4 you to -- I mean, for you to look me in my eye and tell me that,
5 you know what I'm saying, you really sorry, the career wasn't
6 even mandatory. It was advisory. That was advisory. That's
7 like you ain't even really have to do that. The career is
8 the -- when you say -- really want to say F me, you know what
9 I'm saying. That's advisory. Don't no place in the world
10 career people for 1.2 grams and small drug amounts.

11 And then I even point that out to you in the Moncrieffe
12 v. Holder case, and you still say okay, deal with that in
13 appeal. But I already knew you was going to give me all the
14 time and make me fight to come back. But I got four kids, man.
15 This case is only 37, 46 months. All this stuff, unnecessary
16 stuff that you all did, it's preventing me from going home to
17 take care of my function.

18 You all might don't think I'm changed, but I changed
19 because guess what. I'm not tearing this place up. I'm talking
20 to you. And for you to -- I mean, I understand the sentence,
21 but my whole problem is -- because this is a lot of more people
22 coming in here behind me that don't know the law, you know what
23 I'm saying. And everything that you all deal with this case
24 from the beginning to the bottom been sloppy and unprofessional.

25 So, for you to -- I mean, for you to hand down that

1 sentence and for you to know the law, I mean, I'm trying to like
2 really -- because I don't know you. So, I'm trying to really
3 figure out like -- because you ain't sentence me because of the
4 law. You sentence me from your own personal feelings. And I'm
5 trying to see like why, though. I ain't did nothing to you. It
6 ain't -- the sentence didn't have to be that harsh.

7 Twenty years was too much because it's only a case that carries
8 ten year max. It's been supersized, you know what I'm saying.

9 So, okay. Twenty I would have said, you ain't -- but
10 35? That means you ain't -- like I came in here, and you know
11 what I'm saying, showed you all that I ain't no idiot and made
12 Mr. Beavis and Butthead over there, you know what I'm saying,
13 look unprofessional. I apologize. I apologize. Don't attack
14 me.

15 But I'm just saying. Come on, man. You know what I'm
16 saying? Like can I get -- man to man can I get a real, a real,
17 you know what I'm saying. Because this time I'm going to
18 meditate on for a long time, you know what I'm saying. I'm
19 going to be back. I'm going to continue fighting. But I got to
20 see how a judge like you thinking.

21 With all this stuff that's going on TV, with the way
22 that you sentence me and you still sentence me. So, it couldn't
23 have been about a law. I'm trying to see like is it because of
24 my race, or is it because it's a friendship going on here.
25 That's the only two reasons. Because every day and on the radio

1 all day you hear stop these tough sentences. I've been
2 sentenced like a kingpin. I got more time than the majority of
3 MCC with people that come in here with kilos. I seen a person
4 walk out this same courtroom with 500 pounds of marijuana and
5 leave out of here with five years. But you look at a person
6 like me, 1.2 grams, that I could have came up here and blew it
7 out his hand and it wouldn't have been no case. 35 years? I
8 see 15 years for the gun. That's reasonable. That's some
9 common sense. Anything else after that was unhuman.

10 THE COURT: All I can tell you is that my sentence has
11 nothing to do with Mr. Karner. It has nothing to do with the
12 fact that you're an African-American. It has everything to do
13 with my best effort at analyzing and following the directives
14 and considerations contained in Section 3553(a) of the criminal
15 code.

16 DEFENDANT POKE: Right. I understand. I ain't going
17 to hold the court up no more, you know what I'm saying. But I'd
18 just like to speak my feelings in my mind. But man to man, me
19 to you, that you know I know everything you said was a lie.
20 Everything that you said, you know what I'm saying, you're a
21 liar. And for the future, we both need to work on being better
22 people.

23 THE COURT: Court's in recess.

24 (Which were all the proceedings had in the above-entitled
25 cause on the day and date aforesaid.)

1 I certify that the foregoing is a correct transcript from
2 the record of proceedings in the above-entitled matter.

3

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5 Mary T. Lindbloom
6 Official Court Reporter

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